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VIA ECF AND E-MAIL

Hon. Richard J. Sullivan
United States District Court
Southern District of New York
40 Foley Square, Room 2104
New York, NY 10007

Re: *Johnson v. National Football League Players Association, et al.*, No. 17-cv-5131
(RJS)

Dear Judge Sullivan:

We represent the National Football League (“NFL”) and National Football League Management Council (“NFLMC,” collectively with the NFL, the “NFL Defendants”) in the above-captioned matter. Pursuant to Your Honor’s Individual Rules and Practices, as well as the Court’s November 19, 2018 Order (Dkt. No. 142), the NFL Defendants respectfully submit the following response to Plaintiff David Lane Johnson’s November 19, 2018 pre-motion letter seeking permission to file a motion under Rule 56(d) of the Federal Rules of Civil Procedure. Specifically, Johnson intends to ask the Court to “deny the NFLPA’s Motion for Summary Judgment and permit [Johnson] discovery prior to opposing it.” (Dkt. No. 141.)

Although Johnson’s LMRDA claims are asserted against the NFLPA and not the NFL Defendants, the NFL Defendants nevertheless oppose Johnson’s request for discovery, as well as the scope of his intended discovery.¹ The discovery requested by Johnson is a backdoor attempt to re-open the underlying arbitration, which Johnson lost. Indeed, the sorts of requests enumerated in Johnson’s letter – including depositions of no fewer than five individuals and document subpoenas to the NFL Defendants – were considered by the arbitrator and were denied. (*See* Dkt. No. 111 at 3, 5-6.) Johnson’s request is yet another attempt to gain discovery that was already denied by the arbitrator. *See Nat’l Football League Mgmt. Council v. Nat’l Football League Players Ass’n*, 820 F.3d 527, 532 (2d Cir. 2016) (finding that it is not the court’s role to “second-guess the arbitrator’s procedural rulings” because the court’s “obligation is limited to determining

¹ The NFL Defendants believe that dismissal of the NFL Defendants from this action is appropriate, given the Court’s October 3, 2018 Opinion and Order. (Dkt. No. 125.) Accordingly, on November 2, 2018, the NFL Defendants moved this Court to dismiss the NFL Defendants from this action pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. (Dkt. Nos. 132, 133.)



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whether the arbitration proceedings and award met the minimum legal standards established by the Labor Management Relations Act”).

Moreover, Johnson’s emphasis on “unexplained modifications, deviations, and amendments to the 2015 Policy” is inconsequential. As this Court already found, “[e]ach of the deviations alleged by Johnson plausibly falls within the realm of being ‘necessary to the orderly implementation and administration’ of the Policy.” (Dkt. No. 125 at 11.) Discovery – particularly the expansive discovery requested by Johnson – is therefore inappropriate and unfounded. *See DePaola v. City of New York*, 586 F. App’x 70, 71 (2d Cir. 2014) (“At bottom, a party may not use Rule 56(d) as a means of finding out whether it has a case.”).

Rule 56(d) “does not permit Plaintiff to engage in a ‘fishing expedition,’” but that is exactly what Johnson is doing. *Papazian v. Sony Music Entertainment*, No. 16-cv-7911 (RJS), 2017 WL 4339662, at *7 (S.D.N.Y. Sept. 28, 2017) (Sullivan, J.) (quoting *Waldron v. Cities Serv. Co.*, 361 F.2d 671, 673 (2d Cir. 1966)). Accordingly, the NFL Defendants respectfully oppose Johnson’s request to move for discovery under Fed. R. Civ. P. 56(d).

Respectfully,

/s/ Daniel L. Nash

Counsel for NFL Defendants